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AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY FEBRUARY 1, 2010

AMENDED IN SENATE JUNE 2, 2009

AMENDED IN SENATE MAY 4, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 565

Introduced by Senators Pavley and Steinberg
(Principal coauthor: Assembly Member Huffman)

February 27, 2009

An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1228.5, 1228.7, 1525, 1535, 1538, 1551, 1825, 1845, 5103, and 5106 of, and to add Sections 1051.1, 1052.5, 1826, 1846, and 1847 to, the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 565, as amended, Pavley. Water resources.

(1) Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit a technical or monitoring report related to the diversion or use of water by that person or entity, if the report is in that person's or entity's possession or control, and would authorize the board to require specified persons and entities to prepare and submit technical and monitoring reports. The bill would authorize the board, in connection with the investigation or proceeding, and with the consent of the owner or possessor of the facilities or pursuant to a warrant, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(3) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that, for a first enforcement proceeding, a person or entity committing a trespass may be liable either in an amount not to exceed the sum of \$1,000 for each day in which the trespass occurs, if the unauthorized diversion or use does not exceed 1,000 acre feet ~~per day~~, or, if the unauthorized diversion or use exceeds 1,000 acre feet ~~per day~~, in an amount not to exceed the sum of either \$1,000 for each day in which the trespass occurs or the ~~highest market value of the water~~ *economic benefit of the violation*, as specified, whichever is the greater amount. For a subsequent enforcement proceeding, the bill would provide that the person or entity committing the trespass may be liable in an amount not to exceed either \$5,000 for each day in which

the trespass occurs, as specified, or the ~~highest market value of the water~~ *economic benefit of the violation*, as ~~specified~~ *defined*, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified.

(4) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions.

This bill would establish a rebuttable presumption, as specified, in any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period. The bill would require certain statements submitted to the board, that are canceled for nonpayment of fees, to be deemed submitted for purposes of that presumption.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under provisions that require the reasonable use of water.

(5) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order. The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the

unreasonable use of water. The board would be required to establish a schedule of penalties that applies to small farms for de minimis water right violations. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6103.1 of the Government Code is
2 amended to read:

3 6103.1. Section 6103 does not apply to any fee or charge for
4 official services required by Part 1 (commencing with Section
5 1000), Part 2 (commencing with Section 1200), Part 3
6 (commencing with Section 2000), Part 4 (commencing with Section
7 4000), Part 5 (commencing with Section 4999), or Part 5.1
8 (commencing with Section 5100), of Division 2, Division 7
9 (commencing with Section 13000), or Division 35 (commencing
10 with Section 85000) of the Water Code.

11 SEC. 2. Section 6103.4 of the Government Code is amended
12 to read:

13 6103.4. Section 6103 does not apply to any fee or charge for
14 official services required by Section 100860.1 of the Health and
15 Safety Code.

16 SEC. 3. Section 1051.1 is added to the Water Code, to read:

17 1051.1. (a) (1) In conducting any investigation or proceeding
18 specified in Section 275 or 1051, or Article 7 (commencing with
19 Section 13550) of Chapter 7 of Division 7, the board may order
20 any person or entity that diverts or uses water to submit to the
21 board technical or monitoring program reports related to that
22 person's or entity's diversion or use of water, if the technical or
23 monitoring program reports are within that person's or entity's
24 possession or control. Except as provided in paragraph (2), the
25 board shall not require a person or entity to prepare any new report
26 for purposes of this section.

27 (2) The board may order a person or entity that diverts 200 or
28 more acre feet of water per year to prepare and submit technical
29 or monitoring program reports related to that person's or entity's
30 diversion or use of water, as the board may specify, for purposes
31 of paragraph (1). If the preparation of a technical or monitoring

1 program report would create a material financial hardship, the
2 person or entity may request the board to revise its order to avoid
3 the material financial hardship.

4 (3) The costs incurred by the person or entity in the preparation
5 of reports required pursuant to this subdivision shall bear a
6 reasonable relationship to the need for the report and the benefit
7 to be obtained from the report.

8 (4) If the preparation of individual reports would result in a
9 duplication of effort, or if the reports are necessary to evaluate the
10 cumulative effect of several diversions or uses of water, the board
11 may order any person or entity subject to this subdivision to pay
12 a reasonable share of the cost of preparing reports.

13 (b) Any order issued under this section shall be served by
14 personal service or registered mail on the party required to submit
15 technical or monitoring program reports or to pay a share of the
16 costs of preparing reports. Unless the board issues the order after
17 a hearing, the order shall inform the party of the right to request a
18 hearing within 30 days after the party has been served. If the party
19 does not request a hearing within that 30-day period, the order
20 shall take effect as issued. If the party requests a hearing within
21 that 30-day period, the board may adopt a decision and order after
22 conducting a hearing.

23 (c) Upon application of any person or entity or upon its own
24 motion, the board may review and revise any order requiring
25 technical or monitoring program reports issued pursuant to this
26 section, in accordance with the procedures set forth in subdivision
27 (b).

28 (d) In conducting any investigation or proceeding specified in
29 Section 275 or 1051, or Article 7 (commencing with Section
30 13550) of Chapter 7 of Division 7, the board, with the consent of
31 the owner or possessor of the facilities or, if the consent is withheld,
32 with a warrant duly issued pursuant to the procedure set forth in
33 Title 13 (commencing with Section 1822.50) of Part 3 of the Code
34 of Civil Procedure, may inspect the facilities of any person or
35 entity to ascertain whether the purposes of Section 100 and this
36 division are being met and to ascertain compliance with any permit,
37 license, certification, registration, decision, order, or regulation
38 issued under Section 275, this division, or Article 7 (commencing
39 with Section 13550) of Chapter 7 of Division 7. ~~The~~

1 (e) The board shall adopt regulations for procedures pursuant
2 to Article 13 (commencing with Section 11460.10) of Chapter 4.5
3 of Part 1 of Division 3 of Title 2 of the Government Code, and
4 any time extensions necessary to implement those regulations.

5 SEC. 4. Section 1052 of the Water Code is amended to read:

6 1052. (a) The diversion or use of water subject to this division
7 other than as authorized in this division is a trespass.

8 (b) The Attorney General, upon request of the board, shall
9 institute in the superior court in and for any county in which the
10 diversion or use is threatened, is occurring, or has occurred an
11 action for the issuance of injunctive relief as may be warranted by
12 way of temporary restraining order, preliminary injunction, or
13 permanent injunction.

14 (c) (1) Any person or entity committing a trespass as defined
15 in this section may be liable in an amount not to exceed the
16 following amounts:

17 (A) For a first enforcement proceeding, if the unauthorized
18 diversion or use of water does not exceed 1,000 acre feet-per day
19 on any day in which the trespass occurs, one thousand dollars
20 (\$1,000) for each day in which the trespass occurs.

21 (B) For a first enforcement proceeding, if the unauthorized
22 diversion or use of water exceeds 1,000 acre feet-per day on any
23 day in which the trespass occurs, the greater of either of the
24 following amounts:

25 (i) One thousand dollars (\$1,000) for each day in which the
26 trespass occurs.

27 ~~(ii) The highest market value of the water subject to the trespass~~
28 ~~as determined pursuant to Section 1052.5.~~

29 *(ii) The economic benefit of the violation, as defined in Section*
30 *1052.5.*

31 (C) For any subsequent enforcement proceeding, the greater of
32 either of the following amounts:

33 (i) Five thousand dollars (\$5,000) for each day in which the
34 trespass occurs.

35 ~~(ii) The highest market value of the water subject to the trespass~~
36 ~~as determined pursuant to Section 1052.5.~~

37 *(ii) The economic benefit of the violation, as defined in Section*
38 *1052.5.*

39 (2) The Attorney General, upon request of the board, shall
40 petition the superior court to impose, assess, and recover any sums

pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

(3) Civil liability ~~may be for a trespass~~ *may be administratively* imposed by the board pursuant to Section 1055.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(e) The remedies prescribed in this section are cumulative and not alternative.

(f) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section by Senate Bill 565 of the 2009–10 Regular Session of the Legislature does not apply to violations that occurred prior to January 1, 2011.

SEC. 5. Section 1052.5 is added to the Water Code, to read:

~~1052.5. In establishing the highest market value of water for purposes of Sections 1052 and 1845, the board shall consider the~~

1052.5. (a) For the purposes of Sections 1052 and 1845, the “economic benefit of the violation” means the savings or monetary gain derived from the act or omission that constitutes the violation, as determined by the board.

(b) To the extent that the board’s determination of the “economic benefit of the violation” is based on the highest market value of water, the board shall consider, in determining the highest market value of water, the price, per acre foot, of water transferred or exchanged within the watershed where the trespass occurred during a period of one year immediately preceding the first day on which the trespass occurred, or, if there has been no transfer or exchange of water within the watershed during that period, the board shall consider the price, per acre foot, of water transferred or exchanged within the watershed in the most recent year in which there has been a transfer or exchange. For purposes of this section subdivision, the board shall consider only the price, per acre foot, of water or water rights transferred or exchanged for a period of one year or less. The one-year period shall not include any time

1 required for monitoring, reporting, or mitigation before or after
2 the transfer or exchange is made.

3 SEC. 6. Section 1055 of the Water Code is amended to read:

4 1055. (a) The executive director of the board may issue a
5 complaint to any person or entity on which administrative civil
6 liability may be imposed pursuant to Section 1052, Article 4
7 (commencing with Section 1845) of Chapter 12 of Part 2 of
8 Division 2, or Section 5107. The complaint shall allege the act or
9 failure to act that constitutes a trespass or violation, the provision
10 of law authorizing civil liability to be imposed, and the proposed
11 civil liability.

12 (b) The complaint shall be served by personal notice or certified
13 mail, and shall inform the party served that the party may request
14 a hearing not later than 20 days from the date the party was served.
15 The hearing shall be before the board or a member of the board in
16 accordance with Section 183.

17 (c) The board may adopt an order setting administrative civil
18 liability, or determining that no liability will be imposed, after any
19 necessary hearing.

20 (d) Orders setting administrative civil liability shall become
21 effective and final upon issuance thereof and payment shall be
22 made.

23 SEC. 7. Section 1055.2 of the Water Code is amended to read:

24 1055.2. A person or entity shall not be subject to both civil
25 liability imposed under Section 1055 and civil liability imposed
26 by the superior court under Section 1052, 1845, or 1846 for the
27 same act or failure to act.

28 SEC. 8. Section 1055.3 of the Water Code is amended to read:

29 1055.3. In determining the amount of civil liability, the board
30 shall take into consideration all relevant circumstances, including,
31 but not limited to, the extent of harm caused by the violation, the
32 nature and persistence of the violation, the length of time over
33 which the violation occurs, and with respect to the violator, the
34 ability to pay, the effect on the ability to continue in business, the
35 corrective action, if any, taken by the violator, and other matters
36 as justice may require.

37 SEC. 9. Section 1120 of the Water Code is amended to read:

38 1120. This chapter applies to any decision or order issued under
39 this part or Section 275, Part 2 (commencing with Section 1200),
40 Part 2 (commencing with Section 10500) of Division 6, Article 7

(commencing with Section 13550) of Chapter 7 of Division 7, Section 85230, or the public trust doctrine.

SEC. 10. Section 1228.5 of the Water Code is amended to read:

1228.5. (a) Registration of a small domestic or livestock stockpond use pursuant to this article shall be renewed prior to the expiration of each five-year period following completed registration.

(b) Renewal of registration shall be made upon a form prescribed by the board and shall contain a report of water use made pursuant to the registration as may be required by the board.

(c) The conditions established by the board pursuant to Section 1228.6 that are in effect at the time of renewal of registration shall supersede the conditions that were applicable to the original completed registration.

(d) Failure to renew registration in substantial compliance with the reporting requirements prescribed by the board within the time period specified in subdivision (a), or to pay the renewal fee specified in subdivision (b) of Section 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

SEC. 11. Section 1228.7 of the Water Code is amended to read:

1228.7. (a) Any registrant may change the point of diversion or place of use by delivering to the board an amended registration form in accordance with Section 1228.3, including payment of the registration fee specified in Section 1525, except that the purpose of the use may not be changed and the change may not operate to the injury of any legal user of the water involved.

(b) Any completed amended registration of water use continues in effect the priority of right as of the date of the original completed registration.

(c) All provisions of this article regarding appropriations made pursuant thereto, including, but not limited to, provisions regarding enforcement, are applicable to the appropriation as described in the completed amended registration, except that the conditions established by the board pursuant to Section 1228.6 which are in effect at the time of completion of the amended registration shall supersede the conditions which were applicable to the original completed registration.

SEC. 12. Section 1525 of the Water Code is amended to read:

1 1525. (a) Each person or entity who holds a permit or license
2 to appropriate water, and each lessor of water leased under Chapter
3 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
4 fee according to a fee schedule established by the board.

5 (b) Each person or entity who files any of the following shall
6 pay a fee according to a fee schedule established by the board:

7 (1) An application for a permit to appropriate water.

8 (2) A registration of appropriation for a small domestic use or
9 livestock stockpond use.

10 (3) A petition for an extension of time within which to begin
11 construction, to complete construction, or to apply the water to
12 full beneficial use under a permit.

13 (4) A petition to change the point of diversion, place of use, or
14 purpose of use, under a registration for small domestic use or
15 livestock stockpond use, or under a permit or license.

16 (5) A petition to change the conditions of a permit or license,
17 requested by the permittee or licensee, that is not otherwise subject
18 to paragraph (3) or (4).

19 (6) A petition under Section 1707 or 1740 to change the point
20 of diversion, place of use, or purpose of use of a water right that
21 is not subject to a permit or license to appropriate water.

22 (7) A petition to change the point of discharge, place of use, or
23 purpose of use, of treated wastewater, requested pursuant to Section
24 1211.

25 (8) An application for approval of a water lease agreement.

26 (9) A request for release from priority pursuant to Section 10504.

27 (10) An application for an assignment of a state-filed application
28 pursuant to Section 10504.

29 (11) A statement of water diversion and use pursuant to Part
30 5.1 (commencing with Section 5100).

31 (c) The board shall set the fee schedule authorized by this section
32 so that the total amount of fees collected pursuant to this section
33 equals that amount necessary to recover costs incurred in
34 connection with the issuance, administration, review, monitoring,
35 and enforcement of permits, licenses, certificates, and registrations
36 to appropriate water, water leases, statements of diversion and use,
37 and orders approving changes in point of discharge, place of use,
38 or purpose of use of treated wastewater. The board may include,
39 as recoverable costs, but is not limited to including, the costs
40 incurred in reviewing applications, registrations, statements of

1 diversion and use, petitions and requests, prescribing terms of
2 permits, licenses, registrations, and change orders, enforcing and
3 evaluating compliance with permits, licenses, certificates,
4 registrations, change orders, and water leases, inspection,
5 monitoring, planning, modeling, reviewing documents prepared
6 for the purpose of regulating the diversion and use of water,
7 applying and enforcing Section 275, the prohibition set forth in
8 Section 1052 against the unauthorized diversion or use of water
9 subject to this division, the requirements under Part 5.1
10 (commencing with Section 5100) for filing statements of diversion
11 and use, and the administrative costs incurred in connection with
12 carrying out these actions.

13 (d) (1) The board shall adopt the schedule of fees authorized
14 under this section as emergency regulations in accordance with
15 Section 1530.

16 (2) For filings subject to subdivision (b), the schedule may
17 provide for a single filing fee or for an initial filing fee followed
18 by an annual fee, as appropriate to the type of filing involved, and
19 may include supplemental fees for filings that have already been
20 made but have not yet been acted upon by the board at the time
21 the schedule of fees takes effect.

22 (3) The board shall set the amount of total revenue collected
23 each year through the fees authorized by this section at an amount
24 equal to the revenue levels set forth in the annual Budget Act for
25 this activity. The board shall review and revise the fees each fiscal
26 year as necessary to conform with the revenue levels set forth in
27 the annual Budget Act. If the board determines that the revenue
28 collected during the preceding year was greater than, or less than,
29 the revenue levels set forth in the annual Budget Act, the board
30 may further adjust the annual fees to compensate for the over or
31 under collection of revenue.

32 (e) Annual fees imposed pursuant to this section for the 2003–04
33 fiscal year shall be assessed for the entire 2003–04 fiscal year.

34 (f) Fees imposed on holders of riparian water rights or rights to
35 water appropriated prior to December 19, 1914, pursuant to this
36 chapter shall bear a fair or reasonable relationship to the payor's
37 burden on, or benefits from, the board's water rights program
38 funded by those fees.

39 SEC. 13. Section 1535 of the Water Code is amended to read:

1 1535. (a) Any fee subject to this chapter that is required in
2 connection with the filing of an application, registration, request,
3 statement, or proof of claim, other than an annual fee required after
4 the period covered by the initial filing fee, shall be paid to the
5 board.

6 (b) If a fee established under subdivision (b) of Section 1525,
7 Section 1528, or Section 13160.1 is not paid when due, the board
8 may cancel the application, registration, petition, request, statement,
9 or claim, or may refer the matter to the State Board of Equalization
10 for collection of the unpaid fee.

11 SEC. 14. Section 1538 of the Water Code is amended to read:

12 1538. (a) In any proceeding pursuant to Section 1052 in which
13 it is determined that there has been a violation of the prohibition
14 against the unauthorized diversion or use of water subject to this
15 division, the board or court, as the case may be, may impose an
16 additional liability in the amount of 150 percent of any annual fees
17 that would have been required under this division if the diversion
18 or use had been authorized by a permit or license to appropriate
19 water.

20 (b) In any proceeding pursuant to Section 5107 in which the
21 board imposes liability for a failure to file a statement of diversion
22 and use or for a material misstatement in a statement of diversion
23 and use, the board may impose an additional liability in the amount
24 of 150 percent of any fees that have not been paid but would have
25 been required under this division if the statement of diversion and
26 use had been filed and did not make any material misstatement.

27 (c) The additional liability imposed under this section may
28 include interest, at the rate provided under Section 685.010 of the
29 Code of Civil Procedure, from the dates the ~~annual~~ fees would
30 have been assessed.

31 SEC. 15. Section 1551 of the Water Code is amended to read:

32 1551. All of the following shall be deposited in the Water
33 Rights Fund:

34 (a) All fees, expenses, and penalties collected by the board or
35 the State Board of Equalization under this chapter and Part 3
36 (commencing with Section 2000).

37 (b) All funds collected under Section 1052, Article 4
38 (commencing with Section 1845) of Chapter 12, and Section 5107.

(c) All fees collected under Section 13160.1 in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

SEC. 16. Section 1825 of the Water Code is amended to read:

1825. It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, to prevent the unlawful diversion of water, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, and to enforce reporting and monitoring requirements.

SEC. 17. Section 1826 is added to the Water Code, to read:

1826. The board shall establish a schedule of penalties that applies to small farms for de minimis water right violations under this division.

SEC. 18. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following amounts:

(A) For a first enforcement proceeding, if the violation of a cease and desist order does not involve an unauthorized diversion or use of water exceeding 1,000 acre feet-per-day on any day in which the violation occurs, one thousand dollars (\$1,000) for each day in which the violation occurs.

(B) For a first enforcement proceeding, if the violation of a cease and desist order involves an unauthorized diversion or use of water exceeding 1,000 acre feet-per-day on any day in which the violation occurs, the greater of either of the following amounts:

(i) One thousand dollars (\$1,000) for each day in which the violation occurs.

~~(ii) The highest market value of the water subject to the violation as determined pursuant to Section 1052.5.~~

(ii) The economic benefit of the violation, as defined in Section 1052.5.

(C) For any subsequent enforcement proceeding, the greater of either of the following amounts:

(i) Five thousand dollars (\$5,000) for each day in which the violation occurs.

~~(ii) The highest market value of the water subject to the violation as determined pursuant to Section 1052.5.~~

~~(ii) The economic benefit of the violation, as defined in Section 1052.5.~~

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability *for the violation of a cease and desist order* may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(e) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section by Senate Bill 565 of the 2009–10 Regular Session of the Legislature does not apply to violations that occurred prior to January 1, 2011.

SEC. 19. Section 1846 is added to the Water Code, to read:

1846. (a) Any person or entity subject to a monitoring or reporting requirement specified in subdivision (f) who violates that reporting or monitoring requirement, makes a material misstatement in any record or report submitted under that reporting or monitoring requirement, or tampers with or renders inaccurate any monitoring device required under that reporting or monitoring requirement shall be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the violation occurs.

1 (b) Civil liability may be imposed by the superior court. The
2 Attorney General, upon the request of the board, shall petition the
3 superior court to impose, assess, and recover those sums.

4 (c) Civil liability may be imposed administratively by the board
5 pursuant to Section 1055.

6 (d) In determining the appropriate amount, the court, or the
7 board, as the case may be, shall take into consideration all relevant
8 circumstances, including, but not limited to, the extent of harm
9 caused by the violation, the nature and persistence of the violation,
10 the length of time over which the violation occurs, and, with respect
11 to the violator, the ability to pay, the effect on the ability to
12 continue in business, the corrective action, if any, taken by the
13 violator, and other matters as justice may require.

14 (e) All funds recovered pursuant to this section shall be
15 deposited in the Water Rights Fund established pursuant to Section
16 1550.

17 (f) (1) This section applies to any reporting or monitoring
18 requirement established under any permit, license, certificate,
19 registration, decision or order, or regulation issued by the board
20 pursuant to this division, Section 275, or Article 7 (commencing
21 with Section 13550) of Division 7.

22 (2) This section also applies to any reporting or monitoring
23 requirement established by the department under Section 275, if
24 the department requests enforcement pursuant to this section.

25 (3) This section does not provide a basis for imposing liability
26 on a watermaster who is subject to reporting or monitoring
27 requirements but does not divert or use the water subject to those
28 requirements.

29 SEC. 20. Section 1847 is added to the Water Code, to read:

30 1847. (a) Any person or entity who violates any term or
31 condition of a permit, license, certificate, or registration issued
32 under this division or any order or regulation adopted by the board
33 under Section 275 may be liable in an amount not to exceed five
34 hundred dollars (\$500) for each day in which the violation occurs.

35 (b) Civil liability may be imposed by the superior court. The
36 Attorney General, upon the request of the board, shall petition the
37 superior court to impose, assess, and recover those sums.

38 (c) Civil liability may be imposed administratively by the board
39 pursuant to Section 1055.

(d) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

(e) No liability shall be recoverable under this section for any violation for which liability is recovered under Section 1052 or 1846.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

SEC. 21. Section 5103 of the Water Code is amended to read: 5103. Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. The location of the diversion works shall be depicted on a specific United States Geological Survey topographic map, or shall be identified using the California Coordinate System, or latitude and longitude measurements. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the

1 California Bay-Delta Authority, or its successor on behalf of a
2 person that is subject to paragraph (1) shall be conditioned on
3 compliance with that paragraph.

4 (B) Notwithstanding subparagraph (A), the board may determine
5 that a person is eligible for a grant or loan even though the person
6 is not complying with paragraph (1), if both of the following apply:

7 (i) The board determines that the grant or loan will assist the
8 grantee or loan recipient in complying with paragraph (1).

9 (ii) The person has submitted to the board a one-year schedule
10 for complying with paragraph (1).

11 (C) It is the intent of the Legislature that the requirements of
12 this subdivision shall complement and not affect the scope of
13 authority granted to the board by provisions of law other than this
14 article.

15 (f) The purpose of use.

16 (g) A general description of the area in which the water was
17 used. The location of the place of use shall be depicted on a specific
18 United States Geological Survey topographic map and on any other
19 maps with identifiable landmarks. If assigned, the public land
20 description to the nearest 40-acre subdivision and the assessor's
21 parcel number shall also be provided.

22 (h) The year in which the diversion was commenced as near as
23 is known.

24 SEC. 22. Section 5106 of the Water Code is amended to read:

25 5106. (a) Neither the statements submitted under this part nor
26 the determination of facts by the board pursuant to Section 5105
27 shall establish or constitute evidence of a right to divert or use
28 water.

29 (b) (1) The board may rely on the names and addresses included
30 in statements submitted under this part for the purpose of
31 determining the names and addresses of persons who are to receive
32 notices with regard to proceedings before the board.

33 (2) Notwithstanding paragraph (1), any person may submit, in
34 writing, a request to the board to provide notification to a different
35 address, and the board shall provide the notification to that address.

36 (3) If the board provides notice to persons who file statements
37 under this part, the notice shall not be determined to be inadequate
38 on the basis that notice was not received by a person, other than a
39 party to whom the board's action is directed, who fails to file a
40 statement required to be filed under this part.

1 (4) This subdivision does not affect the requirement in Section
2 2527 to provide notice to all persons who own land that appears
3 to be riparian to the stream system.

4 (c) In any proceeding before the board to determine whether an
5 application for a permit to appropriate water should be approved,
6 any statement submitted under this part or determination by the
7 board pursuant to Section 5105 is evidence of the facts stated
8 therein.

9 (d) (1) In any proceeding before the board in which it is alleged
10 that a right to appropriate water has ceased or is subject to forfeiture
11 for nonuse, there shall be a rebuttable presumption that no use
12 required to be included in a statement submitted under this part
13 occurred unless that use is included in a statement submitted under
14 this part and that the statement is submitted within six months after
15 it is required to be filed with the board. For purposes of this
16 paragraph, a use that is included in a statement that is canceled
17 pursuant to subdivision (b) of Section 1535 shall be deemed
18 submitted.

19 (2) Paragraph (1) does not apply to any use that occurred before
20 January 1, 2010.